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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JEROLD ALAN HAMMANN,

Plaintiff,

v.

800 IDEAS INC., et al.,

Defendants.

2:08-cv-0886-LDG-GWF

ORDER

This matter comes before the court on defendant Susan Parker's motion to dismiss the second amended complaint (#220, opposition #225, reply #228). During the court's consideration of this motion, it has become readily apparent that Parker's motion presents matters outside of the pleadings on almost every ground for dismissal, and plaintiff's opposition, in turn, relies on factual material including the documents relied upon by the court in previous rulings. Furthermore, the statute of limitations and collateral estoppel issues raised by Parker are particularly suited to a summary judgment analysis.

Federal Rule of Civil Procedure 12(d) provides:

If, on a motion under Rule 12(b)(6) . . . matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given reasonable opportunity to present all the material that is pertinent to the motion.

The court concludes that under the mandates of Rule 12(d), defendant Susan Parker should have the opportunity to formulate their arguments and present any material in support thereof, if they so choose, in the context of a summary judgment motion. The court realizes that this ruling

1 will necessitate that the trial scheduled for October 21, 2013, be continued, but the court is bound
2 by the rules of procedure in this instance.¹ Accordingly,

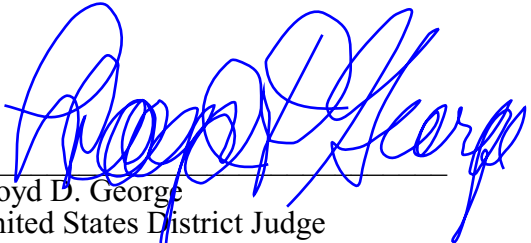
3 THE COURT HEREBY ORDERS that defendant Susan Parker shall have sixty (90) days
4 from the date of this order in which to recast her motion to dismiss the second amended complaint
5 as a motion for summary judgment. Responsive briefing shall be governed by local rules.

6 THE COURT HEREBY ORDERS that defendant Susan Parker's motion to dismiss the
7 second amended complaint (#220) is DENIED as moot.

8 THE COURT FURTHER ORDERS that the trial scheduled for October 21, 2013, is
9 hereby VACATED. The clerk of court is directed to set trial in this matter at a date after February
10 1, 2014.

11 THE COURT FURTHER ORDERS that defendants' motion to adjourn and reschedule
12 trial calendar (#240) is DENIED as moot.

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14 DATED this 26 day of September, 2013.

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17 Lloyd D. George
United States District Judge

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25 ¹While this result delays once again the disposition of this case, the court reminds the parties
26 that the second amended complaint was filed only nine months ago, and two continuances have been
granted since in the intervening months.